

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

IN RE:)
)
S&S STEEL SERVICES, INC.,) CASE NO. 15-07401-JJG
) CHAPTER 11
Debtor.)

**FIRST DAY MOTION FOR AN ORDER (A) PROHIBITING UTILITIES FROM
ALTERING, REFUSING OR DISCONTINUING SERVICES, AND (B) DETERMINING
ADEQUATE ASSURANCES OF PAYMENT FOR FUTURE SERVICES**

S&S Steel Services, Inc., debtor and debtor-in-possession, (“Debtor” or “S&S Steel”), by counsel, requests that the Court enter an order (a) prohibiting utilities from altering, refusing, or discontinuing services, and (b) determining adequate assurances of payment for future services. In support of its motion, the Debtor respectfully represents the following:

GENERAL BACKGROUND

1. On August 31, 2015 (the “Petition Date”), the Debtor filed a voluntary petition under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”). The Debtor continues to operate its business and manage its property as a debtor-in-possession pursuant to §§ 1107(a) and 1108 of the Bankruptcy Code.

2. No trustee or examiner has been appointed in this Chapter 11 case. No official unsecured creditors’ committee has yet been appointed in this Chapter 11 Bankruptcy Case.

3. This is a “First Day Motion” as that term is defined in Southern District of Indiana Local Rule B-9013-3(f).

4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. This motion is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

5. The statutory bases for the relief requested in this motion are Sections 105 and 366 of the Bankruptcy Code.

6. Proposed counsel for the Debtor has discussed the filing of this motion with a staff attorney for the United States Trustee, in accordance with Southern District of Indiana Local Rule B-9013-3(b), and has contacted the courtroom deputy for the Honorable Jeffrey J. Graham, Judge, U.S. Bankruptcy Court for the Southern District of Indiana.

7. S&S Steel is a steel service company founding in 1986 and provides mild carbon steel products to metal stamping and roll forming industries, among other services, and also sells scrap steel. S&S Steel is based in Anderson, Indiana and serves customers in the Mid-West United States region.

8. The Debtor currently employees one hundred fifteen (115) full-time employees¹ and three (3) part-time employees².

RELIEF REQUESTED

9. In the normal conduct of its business, the Debtor uses electric, water/sewage, gas, trash and refuse disposal, internet, telephone, and/or other services provided by certain utility companies with average monthly expenses as is set forth below:

Provider	Service Type	Average Monthly Expense
Anderson City Utilities	Electricity /Water/Sewage	\$26,654.06
Vectren Energy Delivery	Gas	\$6,724.10
Best Waste Disposal	Trash and Refuse Disposal	\$536.67
Comcast	Internet	\$529.27
AT&T	Telephone/Internet	\$1,379.55

(Hereinafter collectively referred to as the “Utility Service Providers”).³

¹ 97 hourly, 18 salaried.

² 2 hourly, 1 salaried.

³ The Debtor reserves the right to update and supplement this list of Utility Services Providers as necessary.

10. The Debtor cannot operate its business without the above utility services, no alternative sources of utility services are available, and continuity of utility services is essential for the operation of the Debtor. Any interruption of utility services would severely disrupt the Debtor's business operations.

11. Currently, the Debtor pays the Utility Service Providers directly, after receiving an invoice for the prior month's service.

12. By this motion, the Debtor seeks entry of an order prohibiting the Utility Service Providers from altering, refusing, or discontinuing services, and determining that a one month's services cash deposit with the Utility Service Providers constitutes adequate assurance to the Utility Service Providers of payment for future services as required under 11 U.S.C. § 366.

13. Prior to the Petition Date, the Debtor endeavored to pay for its utility services in a timely fashion and is current in utility payments as of this date, except for those payments that would have been made in the ordinary course of the Debtor's business but for the filing of this Chapter 11 case.

14. Pursuant to Section 366 of the Bankruptcy Code, a utility cannot alter, refuse, or discontinue service to, or discriminate against the debtor solely on the basis of the commencement of a Chapter 11 case or that a debt owed by the debtor to such utility service for services rendered prior to the order for relief was not paid when due. 11 U.S.C. § 366(a). A utility, may, however, alter, refuse, or discontinue service to a debtor only if, within 20 days after the filing of a petition commencing a case under chapter 11 of the Bankruptcy Code, such utility has not been provided with adequate assurance of payment for services provided post-petition. 11 U.S.C. § 366(b). Further, pursuant to 11 U.S.C. § 366(c), in a chapter 11 case, a utility may alter, refuse or discontinue service to a debtor only if, within 30 days after the filing of a petition

a case under chapter 11 of the bankruptcy code, such utility has not received adequate assurance of payment for utility service that is satisfactory to the utility.

15. The Debtor's concern is that the Utility Service Providers may terminate, alter, or refuse to provide service, or may demand unreasonably large deposits in order to continue providing service. Section 366(c)(3) of the Bankruptcy Code allows a court, after notice and hearing, to order the modification of the amount of adequate assurance of payment under Section 366(c)(2). Accordingly, the Debtor respectfully requests an entry of an order (a) prohibiting the Utility Service Providers from discontinuing, altering, or refusing service to the Debtor, and (b) determining adequate assurance of payment for future services under Section 366 of the Bankruptcy Code.

16. For purposes of Section 366(c) of the Bankruptcy Code, "assurance of payment" is defined as follows:

- i. A cash deposit;
- ii. A letter of credit;
- iii. A certificate of deposit;
- iv. A surety bond; a prepayment of utility consumption; or
- v. Another form of security that is mutually agreed on between the utility and the debtor or the trustee.

11 U.S.C. § 366(c)(1)(A).

17. The Debtor proposes to provide adequate assurance of payment to the Utility Service Providers with a one month's services cash deposit to each utility company listed above. However, if the Utility Service Providers hold a current deposit in at least that amount, there exists sufficient adequate assurance of payment without the need for further deposit by the Debtor.

18. The Debtor believes granting the relief request will not prejudice the rights of the Utility Service Providers under Section 366 of the Bankruptcy Code. The Debtor represents and

submits that its current projected cash flow together with the one month cash deposit proposed to the Utility Service Providers and past timely payment history constitutes adequate assurance of payment to each of the utilities, respectively, for future services.

19. Service of this motion has been made in compliance with Southern District of Indiana Local Rule B-9013-3(d).

THEREFORE, the Debtor, by counsel, respectfully requests an entry of an Order prohibiting the Utility Service Providers from altering, refusing, or discontinuing services, determining adequate assurance of payment for future services, and for all other relief proper.

Respectfully submitted,

KROGER, GARDIS & REGAS, LLP

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Proposed Counsel for S&S Steel Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on August 31, 2015, copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties through the Court's Electronic Case Filing System or by email. Parties may access this filing through the Court's system.

Beth Kramer
beth.kramer@usdoj.gov

U.S. Trustee
ustpreion10.in.ecf@usdoj.gov

I further certify that on August 31, 2015, a copy of the foregoing was sent to the following parties by facsimile or electronic mail (as indicated):

Secured Creditor(s):

Wells Fargo Bank, National Association
c/o Faegre Baker Daniels, LLP
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Jay Jaffe: jay.jaffe@FaegreBD.com
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Michael Stewart: michael.stewart@FaegreBD.com

20 Largest Unsecured Creditors:

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Motion Industries
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Arcelormittal USA Inc.
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Doral Steel

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/s/ Jay P. Kennedy
Jay P. Kennedy